

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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IN RE: SMITH & NEPHEW  
BIRMINGHAM HIP RESURFACING  
(BHR) HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION

MDL-17-md-2775  
Hon. Catherine C. Blake

This Document Relates to  
Case No. 1:20-cv-1286

**SHORT FORM COMPLAINT  
THA TRACK CASES**

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**THA SHORT FORM COMPLAINT**

1. Plaintiff, Patricia S. Frankel, states and brings this civil action in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff is filing this Short Form Complaint pursuant to CMO No. 3, entered on August 3, 2017 by this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is a resident and citizen of New York, New York, and claims damages as set forth below.

3. Federal jurisdiction is proper based on diversity of citizenship.

4. The Federal District in which Plaintiff's initial implants took place: Southern District of New York.

5. The Federal District in which Plaintiff's revision surgery took place: Southern District of New York.

6. Plaintiff brings this action [*check the applicable designation*]:

  X   On behalf of herself;

**FACTUAL ALLEGATIONS**

7. On or about September 16, 2018, Plaintiff underwent surgery during which a Smith & Nephew THA System including an Echelon stem was implanted into Plaintiff's left hip.

8. Plaintiff's left implant surgery was performed by Dr. Steve Stuchin, at NYU Hospital for Joint Disease in New York, New York.

9. Plaintiff underwent a medically-indicated revision of the left hip implant September 4, 2018.

10. Plaintiff's revision surgery was performed at Hospital for Special Surgery in New York, New York, by Dr. Jeffrey Westrich.

11. Plaintiff suffered the following complications, injuries, and/or indications, some or all of which made revision surgery of the left and right hips medically necessary: pain, limited mobility, trunnionosis, and metallosis.

12. Plaintiff adopts the allegations of the THA Master Amended Consolidated Complaint ("THA MACC") and any and all amendments to the MACC.

**ALLEGATIONS AS TO INJURIES**

13. (a) Plaintiff claims damages as a result of (check all that are applicable):

<u>  X  </u>	INJURY TO HERSELF
<u>      </u>	INJURY TO THE PERSON REPRESENTED
<u>      </u>	WRONGFUL DEATH
<u>      </u>	SURVIVORSHIP ACTION
<u>  X  </u>	ECONOMIC LOSS

Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff.

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

14. The following claims and allegations are asserted by Plaintiff and are herein adopted by reference under the laws of the following state (check all that are applicable):

  X   COUNT I (negligence: New York)

  X   COUNT II (negligent failure to warn: New York)

  X   COUNT III (negligent misrepresentation: New York)

  X   COUNT IV (negligence per se: New York)

  X   COUNT V (breach of express warranties: New York)

  X   COUNT VI (punitive damages: New York)

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and,
7. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all claims in Complaint so triable.

Dated: May 21, 2020

Respectfully submitted,

JONES WARD PLC

s/ Alex C. Davis

Alex C. Davis

Jasper D. Ward IV

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